to the Kaiser-Frazer shareholders as a whole had not been fully developed by the appellants. The Committee moved for and was granted permission to file a brief in the Circuit Court regarding this matter.

The same considerations which compelled the Committee to file a brief in the Circuit Court motivate the instant request for permission to file a brief *amicus curiae*. These considerations are of even greater concern to the Committee and the shareholders it represents at this time than they have been previously because recent developments have made it clear that, unless some substantial recovery can be made against the officers and directors of Kaiser-Frazer Corporation, the shareholders of the corporation have no chance of ever getting even a token return on their investment.

3. REASONS FOR SUBMISSION OF BRIEF.

Movant's counsel has read the opinion and the brief of petitioners with great care and movant believes that there are questions of law of relevance to the issues herein which are not fully covered in petitioners' brief.

In particular, movant would like to present a broader and more comprehensive discussion of Rule 23 (c) of the Federal Rules of Civil Procedure, its purpose, scope and applicability to the facts of the instant case, including the effect of the fraud by which settlement was obtained. Movant would also like to expand the discussion, concerning the so-called Permanente cause of action and to raise the question whether a matter of such magnitude and of so clearly a controversial nature should not as a matter of law be ordered tried on its merits rather than compromised by one shareholder on behalf of 30,000 share-

holders. Finally, movant would like to present to this Court the proposition that the consideration involved in this compromise was so wholly inadequate that it called for disapproval of the compromise as a matter of law.

It has not been feasible to present the instant motion at an earlier date due to the necessity of first determining the scope of petitioners' arguments.

It is respectfully requested on the above grounds that this application for leave to file a brief amicus curiae be granted.

Respectfully submitted,

KAISER-FRAZER STOCKHOLDERS PROTECTIVE COMMITTEE.

CHARLES W. STEADMAN,
1656 Union Commerce Bldg.,
Cleveland 14, Ohio,
Attorney for Movant.

FILE
SEP 10
HAROLD B. WILL

In the Supreme Court of the United States

OCTOBER TERM, 1953.

No. 133.

JAMES F. MASTERSON, MICHAEL STELLA, EVA LEFKER and OTIS & COMPANY,

Petitioners,

v.

JEROME R. PERGAMENT and GEORGE J. LONDON, *et al.*, JOSEPH W. FRAZER and HENRY J. KAISER, *et al.*,

Respondents.

STATEMENT IN SUPPORT OF MOTION TO FILE AMICUS CURIAE BRIEF.

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Respondents.

STATEMENT IN SUPPORT OF MOTION TO FILE AMICUS CURIAE BRIEF.

Now comes the Movant, Kaiser-Frazer Stockholders Protective Committee, and states that the objection to its motion f r leave to file a brief amicus curiae is not well taken and that the alleged grounds for objection emphasize the need for such a brief.

Objectors Pergament and London actually held only eight (8) shares of stock of Kaiser-Frazer Corporation when the causes of action, which they are presuming to settle, arose. Despite this they question the right of the Movant, speaking for many hundred times that number of shares, to bring the facts before this Court. The objectors in effect admit that there was fraud involved in this settlement and yet they would deny the right of the committee to focus the attention of this Court directly on this fraud in a manner which Movant submits is not sufficiently accomplished by the briefs heretofore filed.

The members of the committee were notified of this lawsuit and the proposed settlement as were all the other shareholders but this notice did not contain the slightest inkling that there was fraud or collusion in the settlement. As the committee said in its Motion: "Indeed, would not such notice have been most remarkable had it stated in effect (which it did not): *'This settlement was obtained by fraud but the Court thinks it is all right anyway'*?" Had the notice told the whole story, Movant and undoubtedly many other shareholders would have raised their voices against the compromise.

Objectors should not thus be allowed to minimize the fraudulent aspects of their settlement or to continue the impression that the shareholders of Kaiser-Frazer condone this fraud.

Respectfully submitted,

KAISER-FRAZER STOCKHOLDERS PROTECTIVE COMMITTEE.

Counsel for Movant:

CHARLES W. STEADMAN,
1656 Union Commerce Bldg.,
Cleveland 14, Ohio.

AUG 20 19
HAROLD B. WILLEY

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OBJECTION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF.

THEODORE R. REIK,
Chicago, Ill.

SAMUEL I. CHESS,
New York, N. Y.

BERNARD T. HECHT,
Chicago, Ill.

KENNETH FISCHER,
Detroit, Mich.

Attorneys for Respondents, Jerome R. Pergament and George J. London.

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Respondents.

OBJECTION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF.

Now come Jerome R. Pergament and George J. London, respondents in the above entitled proceeding, by their attorneys, and object to the motion of "Kaiser-Frazer Stockholders Protective Committee" for leave to file brief as *amicus curiae,* and for grounds of objection, state:

The provisions of paragraph 9 of Rule 27 of the Rules of this Court were not complied with in the making of said motion, in that,

(1) The consent of the parties was not sought and was not granted or refused.

(2) The movant does not state who constitute the so-called "Kaiser-Frazer Stockholders Protective Committee", when or how it was appointed, what are its powers, or any other fact identifying the personnel of said Committee.

(3) Facts or questions of law that have not been, or reasons for believing that they will not be, presented by the parties, are not set forth, the whole motion being but a broad generalization as to what the "Committee" would like to argue if granted permission.

(4) The statement (Motion, p. 3) that the Committee did not seek to intervene in the District Court because it did not know that it was contended the settlement had been fraudulently obtained and that the Committee assumed good faith in the consummation of the settlement, is inconsistent and insincere in that, if the movant "closely followed the proceedings" as it says, (Motion, p. 3), it was definitely advised that, from the beginning, it had been contended by objectors to the compromise that the settlement negotiations were vulnerable to attack on the ground of fraud (R. 1-217, 219-220; R. 1-228-32; R. 2-308 *et seq.*). After full hearing, the District Court found against these contentions (R. 1-242) and in its final order approving the compromise specifically held "that said agreement of settlement and compromise was arrived at fairly and in good faith," (R. 1-291). The movant had every opportunity to participate in the hearing before the District Court and in the appeal, but did not ap-

pear or make its existence known until after the oral argument in the Court of Appeals.

(5) In the brief filed by the movant after oral argument in the Court of Appeals, the movant conceded that "the possibility that these negotiations entailed actual or constructive fraud *is fully discussed elsewhere in the briefs* and we do not consider it here", thus admitting that the question of the validity of the negotiations was handled by competent counsel in the Court of Appeals, who are the same counsel representing petitioners here. *Northern Securities Company* v. *United States,* 191 US 555.

For the foregoing reasons it is respectfully prayed that the Motion to file *Amicus Curiae* Brief be denied.

THEODORE E. REIN,
SAMUEL L. CHESS,
BERNARD T. HECHT,
KENNETH FISCHER,
Attorneys for respondents Jerome R. Pergament and George J. London.